

APPEAL NO. 040708  
FILED MAY 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 17, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth and fifth quarters. The claimant appealed these determinations on sufficiency of the evidence grounds and asserting evidentiary error. The respondent (carrier) responded, asserting that the claimant's appeal was not timely filed and otherwise urging affirmance.

DECISION

Affirmed.

In its response, the carrier asserts that the claimant's appeal is untimely. We note that a request for appeal is timely if it is mailed on or before the 15th day after the appellant receives the decision and if it is received by the Texas Workers' Compensation Commission (Commission) on or before the 20th day after the date of receipt of the decision. Section 410.202; Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)). The claimant's appeal was mailed on March 29, 2004, and was received by the Commission on April 1, 2004. The assertion of untimeliness is without merit.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that she received an impairment rating of 15% or greater; that she did not commute her impairment income benefits; that the qualifying period for the fourth quarter ran from March 23 to June 24, 2003; and that the qualifying period for the fifth quarter ran from June 25 to September 25, 2003. Section 408.142(a) and Rule 130.102 set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by showing that she had a total inability to work during the relevant qualifying periods. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

Conflicting evidence was presented with regard to the claimant's ability to work during the relevant qualifying periods. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision reflects that while he considered the opinions of two doctors that the claimant had a total inability to work during the relevant

qualifying periods, he determined that in light of the evidence as a whole those opinions were not persuasive.

Finally, the hearing officer did not commit reversible error in excluding the three reports from evidence because the record reflects that the exhibits were not timely exchanged with the carrier in accordance with Rule 142.13(c). We further note that the information contained in the two excluded reports from the claimant's treating doctor are cumulative in nature. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge